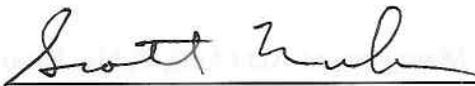


REQUEST FOR ACTION

To: Ted Rauh, Assistant Director
Waste Compliance and Mitigation Program

From: 
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Prepared On: August 24, 2010

Subject: Closure, Postclosure Maintenance, and Financial Assurance Fee

TIME FACTOR: Approval required no later than August 27, 2010, if document is to be posted two weeks prior to the September 13, 2010, WCMP Monthly Public Meeting.

SUMMARY: The Integrated Waste Management Act (Act), Public Resources Code (PRC) §40000 et seq., provides for the protection of public health and safety and the environment through waste prevention, waste diversion, and solid waste processing and disposal. PRC 43508 permits CalRecycle to recover any costs incurred in implementing the requirements for closure and postclosure maintenance plans and financial assurances submittal and implementation. To date CalRecycle has not instituted this allowed regulatory fee. CalRecycle is now proposing to adopt regulations to implement the statutorily permitted regulatory fee reimbursement to offset costs to the Integrated Waste Management Account (IWMA).

OPTIONS: The Assistant Director may decide to:

1. Approve initiating the rulemaking process in September 2010, starting with the informal process including holding a workshop at the September 13, 2010, WCMP Monthly Public Meeting to review draft regulations.
2. Approve initiating the rulemaking process in September 2010, starting with the informal process including holding a workshop at the October 11, 2010, WCMP Monthly Public Meeting to review draft regulations.

RECOMMENDATION: To allow stakeholders sufficient time to review draft regulations prior to the workshop, Option 2 is recommended.

DISCUSSION: The Integrated Waste Management Act (Act), Public Resources Code (PRC) §40000 et seq., provides for the protection of public health and safety and the environment through waste prevention, waste diversion, and solid waste processing and disposal. PRC 43508 permits CalRecycle to recover any costs incurred in implementing the requirements for closure and postclosure maintenance plans and financial assurances submittal and implementation. To date CalRecycle has not instituted this allowed regulatory fee. CalRecycle is now proposing to adopt regulations to implement the statutorily permitted regulatory fee reimbursement to offset costs to the Integrated Waste Management Account (IWMA).

PRC 43500 et seq. requires persons owning or operating solid waste landfills to submit closure and postclosure maintenance plans (plans) and financial assurances for closure and postclosure maintenance to CalRecycle for review and approval. Statute and the implementing regulations require the periodic submittal of updated or revised plans and financial assurances and also require that CalRecycle review and approve these submittals as part of CalRecycle's determination regarding new, revised, and modified landfill permits. In addition CalRecycle manages the financial assurances that are placed to ensure that closure, postclosure maintenance, and corrective actions are provided for in case a landfill owner/operator is unable to meet its financial obligations. A recent multiyear regulatory development process identified over \$6 billion in potential exposure to landfill operators and the State resulting from long term postclosure maintenance and potential corrective action costs, and it is essential that these programs be adequately staffed and managed to minimize this financial risk to California. These requirements apply to landfills that operated on or after January 1, 1988. CalRecycle has implemented these programs since approval of emergency and subsequent final regulations.

Since the establishment of these requirements, staff performing them has been funded from IWMA, CalRecycle's principal source of funding for its solid waste programs. IWMA was used to cover program costs instead of a fee provided for by law because initially IWMA was sufficiently funded by the disposal fee. However, as additional programs have been added to CalRecycle, the impact on available IWMA funds has increased. In addition, recent legislation and resulting regulatory actions have increased the staff workload in this area as both closed and operating landfill operators are now required to provide assurances longer and periodically update their plans and cost estimates. Closed landfills do not pay into IWMA. Since about one-half of the landfills subject to these requirements are now closed and others will soon close, a specific fee for CalRecycle's work in this area is warranted. Furthermore, with the recent economic downturn and California's increasing success in diverting waste to beneficial uses, the annual IWMA income from landfill tipping fees has decreased significantly. In order to maintain existing programs to ensure protection of public health, safety, and the environment, this additional funding source is necessary.

CalRecycle's proposed Closure, Postclosure Maintenance, and Financial Assurances Reimbursement Fee (C//PCM/FA Fee) will be implemented as follows:

- The fee will apply to both active and closed sites.
- The fee will be an annual regulatory fee similar to the waste discharge fee implemented by the State Water Resources Control Board and the facility fees implemented by the Department of Toxic Substances Control.
- The fee will be based on landfill size. The largest landfills would pay the full fee with smaller landfills paying proportionally less.
- The fee will be adjusted annually to provide sufficient resources to fund the specific CalRecycle staffing dedicated to the covered tasks. It is currently anticipated that the preliminary fee amount would be posted on the CalRecycle web site after the Governor's proposed budget is presented to the Legislature in January with an invoice to be issued after the fiscal year budget is signed with payment due within 30 days of the invoice date.

CalRecycle is proposing an annual regulatory fee because this type of fee is more effective and less burdensome to public agencies and private entities because it is a predictable cost. It is also a less expensive fee to administer and should result in lower costs to the regulated community. This fee approach also provides a consistent and predictable revenue source for CalRecycle. This approach also annualizes a range of costs that will vary extensively over a typical five (5) year period for each landfill caused by the permit review cycle and other operational aspects faced by landfill operators. The annual regulatory fee is consistent with the fee collection methods of other agencies that perform similar work and will result in a cost to landfills that is reasonably related to the cost of services provided over time



Ted Rauh, Assistant Director
Waste Compliance and Mitigation Program
CalRecycle

AUGUST 26, 2010
Date

